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Issue Date: 26 February 2018

Case Number: 2016-CFP-00003

In the Matter of:

AMIEE YELINEK,
Complainant,

v.

ALL CITY BAIL BOND CO.,
d/b/a ALL CITY BAIL BONDS,
Respondent.

DECISION AND ORDER DENYING COMPLAINT

This matter arises under the Consumer Financial Protection Act of 2010 ("the Act" or "CFPA"), Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5567, and the regulations at 29 C.F.R. Part 1985. Section 1057 provides whistleblower protection for persons performing tasks related to the offering or provision of a consumer financial product or service.

Background

Respondent is in the business of providing bail bonds and formerly employed Complainant to write bail bond contracts, process payments, and collect arrearages. On December 5, 2015, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging Respondent had discharged her in violation of the Act for expressing concerns that customers were being unlawfully surcharged during credit card transactions. By letter dated February 19, 2016, the Assistant Secretary of Labor for Occupational Safety and Health, acting through the Regional Administrator for OSHA, determined that Respondent is not a covered person or service provider under the Act because bail bond services is "akin to insurance coverage," which is excluded under the Act. 12 U.S.C. § 5481(15)(C). On March 7, 2016, Complainant objected to the Assistant Secretary's Findings and requested a hearing before an administrative law judge. After declining to issue summary decision in this matter, I conducted a hearing on February 7, 2017, in Seattle, Washington. At the

hearing, I admitted into evidence Complainant's Exhibits (CX) 1-8, 10-12, & 16-21, as well as Respondent's Exhibits (RX) 1-12. I received testimony from Complainant, Mr. Troy Hansen, Ms. Teresa Rancotti, Mr. Michael Rocha, and Ms. Courtney Wimer. Except as noted below, I considered all evidence and testimony in reaching my decision. For the reasons stated in this Decision, I deny the complaint.

Findings of Fact

I find the following facts are either uncontroverted or have been established by a preponderance of the evidence:

1. Complainant is a resident of the State of Washington [hereinafter "Washington"], and filed a request for a hearing before an administrative law judge 17 days after the adverse determination by the Assistant Secretary.

2. Respondent is registered as a "legal entity" and "Domestic Profit Corporation" with the Washington Secretary of State. RX 3.

3. Respondent is incorporated under Washington law "for the purpose of transacting any and all lawful business for which Corporations may be incorporated." RX 2 at 1.

4. Respondent is licensed as a "Bail Bond Agency" by the Director of the Washington Department of Licensing. RX 4.

5. Respondent is also licensed as an "Insurance Producer" by the Washington Insurance Commissioner. RX 6.

6. Respondent has been an appointed representative for Seneca Insurance Company, Inc., since at least July 1, 2009. RX 7. Respondent was also, at all relevant times, authorized to sell surety insurance policies on behalf of Lexington Insurance Company. RX 1 at 3.

7. At all relevant times, Respondent was authorized by the King County, WA, Office of the Prosecuting Attorney to post surety bonds in the King County, WA, Jail on behalf of Seneca Insurance Company. RX 1 at 3; RX 7.

8. At all relevant times, Respondent offered and provided surety bonds, commonly known as bail bonds, to individual customers seeking release from confinement for themselves or another person.

9. As a general matter, a bail bond agency may require up to 10% of the full value of the surety bond as a premium before issuance.

10. Respondent provides what its owner calls “payment plans” for customers unable to pay the full price of the premium prior to issuance of the bond, consisting of partial payments of the unpaid amount of the premium on a regular schedule. The use of payment plans is customary practice among bail bond agents in the area. Transcript at 141-44.

11. In the ordinary course of business, Respondent requires individuals seeking a surety bond as indemnitors or guarantors to sign a document styled as an “Indemnitor / Guarantor Checklist” in which is stated, in relevant part, “I understand that I am responsible to make payments for money due on the premium as described above. Finance charges are computed on unpaid balances on the 30th day of each month at a rate of 12% per annum.” CX 1.

12. In the ordinary course of business, Respondent requires individuals who have not paid the full premium amount to sign an “Unpaid Premium Agreement” that provides for installment payments over time toward any unpaid premium amount. The Agreement also provides for the tender and receipt of “deposited security” against the balance due, as well as “a 12% late fee based on the scheduled payment, in addition to any and all finance charges described [in] the *Indemnitor/Guarantor Checklist*.” CX 2.

13. Respondent does not charge or collect interest on late payments until a delinquent account is referred to a collection agency or attorney. Transcript at 144-45.

14. Respondent attempts collection of delinquent unpaid premiums before referring the matter to a collection agency or attorney. Transcript at 145.

Conclusions of Law

Jurisdiction

1. The undersigned has jurisdiction over this matter because Complainant has timely requested a hearing on the record after receiving notice that the Assistant Secretary determined that a violation of the Act had not occurred. *See* 29 C.F.R. § 1985.107.

Respondent is not a Covered Person under the Act

2. The CFPA applies only to employers who are engaged “in offering or providing a consumer financial product or service.” 12 U.S.C. § 5481(6) (defining “covered person”).

2.1. A "consumer financial product or service" does not include "the business of insurance." *Id.* § 5481(15)(C).

2.2. The Act defines the "business of insurance" as follows:

> [T]he writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.
>
> *Id.* § 5481(3).

2.3. "The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." 15 U.S.C. § 1012(a). As both parties are located in Washington State, I will look to the law of that state to determine whether Respondent is in the business of insurance.

2.4. Washington law defines a "bail bond agency" as "a business that sells and issues corporate surety bail bonds."[1] R.C.W. § 18.185.010(5).

2.4.1. A "corporate surety bail bond" is "a bail bond contract that is guaranteed by a domestic, foreign, or alien insurance company which has been qualified to transact surety insurance business in Washington state by the insurance commissioner." W.A.C. 308-19-030(16).

2.5. Similarly, an "insurance producer" under Washington law is a person required to be licensed under the laws of the state to sell, solicit, or negotiate insurance. R.C.W. § 48.17.010(6).

2.6. In that Respondent is a licensed bail bond agency and insurance producer, it appears unarguable that Washington law treats Respondent as a corporate person engaged in the business of insurance. Moreover, Respondent acts as an agent for at least one insurer when writing and issuing bail bonds. RX 7.

2.7. That being noted, Complainant asserts that the activities of bail bond agencies fit imperfectly into the "business of insurance" in that a bail bond agency merely "uses an insurance company to secure the bonds they write." As such, Complainant argues that the business of bail bond agencies is "more like Title

[1] Under Washington law, bail bond insurance is a form of surety. *See* R.C.W. § 48.11.080(2).

Insurance than an Insurance Policy, neither of which seems to me to be 'the business of insurance.'" Request for Hearing at 1.

2.7.1. While Complainant's argument has substantial logical appeal, it does not address the statutory and regulatory reality that Washington regulates bail bond agencies as part of the "business of insurance," regardless of their particular place in the larger business model. Moreover, Claimant's likening of bail bond agencies to title insurance companies is without legal significance, as title insurance is still an insurance product: coverage by contract in which one party agrees to indemnify or reimburse another if a particular event occurs—in this case, non-appearance for a scheduled court date—that is covered under the terms of the contract. However counterintuitive it may be, the contemporary commercial bail bond industry "involves bonds written by local retail bail bond sellers operating as authorized agents of insurance companies [that are] qualified to act as corporate sureties."[2]

2.8. But Complainant further argues that, even if Respondent is engaged in the business of insurance, Respondent also offers and provides other customer services that qualify as financial products and services under the Act. In particular, Complainant points to Respondent's actions in extending credit to customers who cannot pay the entire premium before the bond is issued and collecting debt.

2.8.1. Collecting debts is considered a financial product or service only when the debt is "related to any consumer financial product or service." 12 U.S.C. § 5481(15)(A)(x). In that Respondent's debt collection activities relate only to delinquent insurance premium payments, and, by extension, to the business of insurance, these activities are by definition not financial products or services under the Act. *See id.* § 5481(15)(C).

2.8.2. A different analysis must be undertaken concerning Respondent's extension of credit to customers. As a threshold matter, it is important to note that the extension of credit and servicing loans is ordinarily considered a financial product or service under the Act. *See* 12 U.S.C. § 5481(15)(A)(i). "The term 'credit' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase." *Id.* § 5481(7).

[2] L. Jay Labe and Jerry Watson, "Commercial Bail Bonds," *in* The Law of Commercial Surety and Miscellaneous Bonds (Bruce Charles King, Richard Towle & Samuel J. Arena, eds., Chicago: American Bar Association, 2012), at 287.

Accordingly, as Respondent's "payment plan" allows a customer to incur debt and defer its payment, it is appropriate to consider such actions as the extension of credit and any related administration as servicing loans as those terms are used in the Act.[3] This would, without more, support a conclusion that Respondent offers and provides a financial product or service, and, as such, may be a covered person under the Act.

2.8.2.1. However, there is an additional factor to be considered. The "business of insurance" includes not only "all acts necessary" to the writing of insurance, but also "the activities relating to the writing of insurance . . . conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons." *Id*. § 5481(3). So while the extension of credit to allow the deferred payment of premiums is not "necessary" to the writing of insurance, it indisputably relates to the writing thereof and is conducted by persons appointed to act on behalf of the insurer. As such, the extension of credit is, under these circumstances, included within the definition of the "business of insurance," and consequently excluded from the definition of those financial products or services that are covered by the Act. *See id.* § 5481(15)(C).

2.9. Notwithstanding its extension of credit, servicing loans, and debt collection activities, Respondent is engaged solely in the "business of insurance," as that term is defined by the Act, and does not offer or provide any consumer financial products or services that would bring Respondent under the Act as a "covered person." Stated conversely, Respondent engaged in no extension of credit, loan servicing, or debt collection that was unrelated to its insurance business.

2.10. Accordingly, Respondent is not a "covered person" under the Act.[4]

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[3] Based on its inconsistency with his sworn hearing testimony and the unimpeached documentary evidence at CX 1 & 2, I give no weight to that portion of Mr. Hansen's prehearing declaration—made under penalty of perjury—in which he asserts the following:

> All City is not in the business of banking or extending credit. It is are [sic] paid up front for the services it provides by the premiums it charges. No credit is extended, and no right to payment is deferred.

RX 1 at 3.

[4] This analysis would also support a conclusion that Complainant was not "performing tasks related to the offering or provision of a consumer financial product or service" during her employment by Respondent, and, as such, was not a "covered employee" under the Act. *See* 12 U.S.C. § 5567(b). Further exposition of this analysis is not necessary in light of the disposition of this matter.

3. As the Act regulates only the activities of those persons covered by its provisions, *see* 12 U.S.C. § 5567(a), the Complaint does not allege and the evidence does not establish a violation of the Act.

4. If I determine that Respondent has not violated the Act, I must issue an order denying the complaint. 29 C.F.R. § 1985.109(d)(2).

ORDER

The complaint in this matter is hereby **DENIED**.

SO ORDERED:

WILLIAM T. BARTO
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Any party desiring to seek review, including judicial review, of this decision, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the Administrative Review Board (ARB), which has been delegated the authority to act for the Secretary and issue final decisions in this matter. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of this decision. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Additional information concerning appeals as well as the availability of electronic filing and electronic service may be obtained at https://www.dol.gov/arb/welcome.html.